IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 497 of 2007
Date of Decision: 15.10.2007

Jai Kishan Verma .....Appellant

Versus

Neelam Kumari ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Kulvir Narwal, Advocate, for the appellants.

Shri Vivek Singal, Advocate, for the respondents.

HEMANT GUPTA, J.

This order shall dispose of FAO No. 497 of 2007 and Cross-Objection No. 17-CII of 2007 arising out of the Award rendered by the learned Motor Accident Claims Tribunal, Rohtak (for short `the Tribunal') on 12.12.2006, whereby a sum of Rs.3,12,000/- was awarded as compensation in favour of the claimants and against appellant, owner of the scooter.

It is the case of the claimants that on 10.5.2003, deceased Harish Kumar along with one Ravinder Verma, were riding on Scooter No. HR-12B-8277. Harish Kumar was pillion rider, whereas Ravinder Verma, was driving the said scooter. The said scooter turned-turtled and the pillion rider suffered injuries, which led to his death. Earlier, the claimants filed a petition giving wrong scooter number as i.e. DNM-4136 with a different owner though describing one Ravi Verma as the driver of the said scooter. The said petition was withdrawn on 7.1.2004 in view of the fact that the particulars of all the respondents have not come to the

notice of the claimants. Thereafter, the present petition was filed wherein the Insurance Company has been absolved from the liability in terms of the judgment of the Hon'ble Supreme Court **United India Insurance Co. Ltd. Shimla v. Tilak Singh and others, III(2006) SLT 296**, holding that the Insurance policy would not cover the risk of the pillion rider.

Learned counsel for the appellant has vehemently argued that the judgment relied upon by the learned Tribunal is clearly distinguishable as in the said case the insured has taken only a third party policy, whereas in the present case, the policy is comprehensive, therefore, in respect of the pillion rider, the Insurance Company is liable to make payment of compensation. Such legal position is not disputed by the learned counsel representing the respondent Insurance Company. However, it is alleged that the claim petition itself is not maintainable as while withdrawing the earlier petition, the claimants had not sought permission to file a fresh petition. It is also pointed out that earlier the scooter number was wrongly mentioned. The scooter number has been totally changed in the new petition, which could not have been changed as the petition was withdrawn only on the ground of lack of particulars.

However, I do not find any merit in the said argument raised by the learned counsel for the Insurance Company. The appellant, the owner, admits in the present appeal that in fact, the accident has taken place with the scooter owned by him and driven by Ravinder Verma. Reference is also made to the statement made by Ravinder Verma before the police authorities (Exhibit R.13). He admitted the accident but pointed out that Harish was driving the scooter, whereas he was a pillion rider.

Keeping in view the fact that the factum of accident is not in dispute, mentioning of the wrong number of the scooter or lack of complete name of the driver of the scooter in the earlier petition will not make any difference. It is well settled that the provisions of the Code of Civil Procedure are not applicable to the proceedings before the Tribunal. The Tribunal has permitted the claimants to withdraw the petition in view of the fact that full particulars were not given. The statement made at the time of withdrawal of the petition is also to the effect that the claimants will file a fresh petition with full particulars. Therefore, the permission to file the fresh petition is inherent in the order passed by the Tribunal.

In view of the above, the impugned award passed by the learned Tribunal on 12.12.2006 is modified and it is directed that the liability of payment of compensation to the claimants shall be jointly and severally on the Insurance Company, owner and the driver of the vehicle.

The appeal and the the Cross-objections stand disposed of in the above terms.

15-10-2007 (HEMANT GUPTA)
ds JUDGE